

# FP DEALERSHIP UPDATE: IS IT TIME FOR A TRADE-IN OF YOUR EMPLOYEE HANDBOOK?

Insights  
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Your employee handbook has something in common with the products you sell: neither lasts forever and both eventually will need an update. Think about when that new car rolled off the lot with that new car smell. It was equipped with the latest technology and the state-of-the-art safety features, but, as years passed, technology and safety features improved and became the new state-of-the art. What may have been the best at one time no longer was. When that time comes, the choice becomes whether to stick with a vehicle that subjects you to risks and is no longer state of the art or to trade it in for something that is. The same holds true for your employee handbook.

Like a new vehicle, your current employee handbook may have been state-of-the art when it was drafted. In fact, it still may have lots of miles left if you drafted or revised it within the last 18 months. On the other hand, if the closest you have come to revising your handbook in the last few years is add that project to your "To Do" list, it's probably time to trade it in.

So how do you know if your handbook needs an update (other than it currently has policies mentioning pagers and Blackberries)? Using this article as your check engine light, the following are some examples of policies that may be overdue for service:

- **Accommodations Policy.** Do you have an accommodations policy that addresses possible accommodations needs for disabilities, religious reasons, and pregnancy? If so, does your policy address the

## Related People



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## Industry Focus

### Automotive Dealership

obligations created by the relatively new Pregnant Worker Fairness Act (PWFA)? [The PWFA became effective in 2023](#) and [the EEOC finalized enforcement regulations in June 2024, less than two months ago](#). This law requires most employers to provide reasonable accommodations to qualified employees and applicants with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions unless the accommodation will cause an undue hardship. This law requires employers to analyze the accommodation needs of eligible applicants and employees in much the same manner as ADA accommodation needs are considered.

- **Lactation Break Policy:** Do you have a lactation break policy for nursing mothers? If so, is your policy consistent with both state and federal law requirements? Again, the new pregnancy law also includes requirements about lactation accommodations.
- **EEO Policy.** In recent years, court decisions across the country have expanded the list of characteristics now protected by law. Your EEO policy should reflect these changes.
- **No-Harassment Policy.** The expanded list of protected characteristics also impacts your no-harassment policy as demonstrated by [the EEOC's updated enforcement guidance on workplace harassment issued on April 29, 2024](#). This guidance, updated for the first time in 25 years, greatly expands the list of characteristics the agency considers protected by the law and the types of conduct that may constitute unlawful harassment. By way of example, the new guidance states that conduct that may be harassment includes comments about hair and clothing and accents, misgendering, denial of bathroom usage consistent with gender identity, conduct between persons in the same protected category, and electronic communications to or between employees even when not on working time. Although not the law, these guidelines set forth the EEOC's position on these issues and likely the position some courts will take.
- **Remote Work Policy.** Although few dealership positions lend themselves to remote work, adopting a remote work policy should be considered in today's environment. Setting forth remote work guidelines can reduce risks should a situation arise where an employee requests to

work remotely or remote work is a possible reasonable accommodation.

- **Misconduct Policy.** Surely your dealership can prohibit your workers from making profane comments about each other, right? You can require employees to behave in a professional manner at all times, and prohibit them from recording anyone else during work hours, right? Not necessarily. [A broad new standard from the National Labor Relations Board that came into effect in 2023](#) and impacts both unionized and non-unionized workplaces could find those types of rules and more illegal if it's determined they coerce workers into not banding together for their mutual protection. You'll need to make sure any misconduct policies are drafted as narrowly as possible to advance your legitimate business interests, which may sometimes feel like threading a needle. This is where the help of an experienced workplace lawyer will be very handy.

In addition to the policies above, your handbook likely includes other policies that are outdated and in need of a tune up. Some may not be consistent with current law, and some may not be consistent with your current practices and procedures.

For example, benefits policies written years ago often are not consistent with today's reality. Drug, appearance, vacation, holiday, attendance, and timekeeping policies are examples of policies that may no longer reflect current practice. If your timekeeping policy refers to timecards but your employees now clock in on a computer or with their cell phone, you can update the policy to set forth the required and permissible use of your current system.

## The Big Questions

When considering whether to keep or trade in your current handbook, ask yourself if you can defend on your current handbook. Does your current handbook get the job done or is here a chance that it could leave you stranded? Does your handbook let your employees know what they can expect from you and what you expect from them? Does it protect your employees and the dealership? Does your handbook tell the world that you are keeping up?

If there is any doubt, a handbook update should be in your future. As they say, it is better to have something you do not

need than to need something you do not have, even if you don't get that new car smell.

Whether your employee handbook needs a tune up, an overhaul, or to be traded in, your Fisher Phillips lawyer can help. Reach out to them, the authors of this Insight, or any attorney in our [Automotive Dealership Team](#) to assist. We will continue to monitor further developments and provide updates as necessary, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information.